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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/678,785

10/06/2003

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3984

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CANADA

11/09/2007

EXAMINER

DONNELLY, JEROME W

ART UNIT

PAPER NUMBER

3764

MAIL DATE

DELIVERY MODE

11/09/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/678,785

Applicant(s)

TUSTIN, THOMAS MARK

Examiner

Jerome W. Donnelly

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 6/29/07
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 22-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

JEROME DONNELLY  
PRIMARY EXAMINER

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 22, 23, 24, 30, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Papp et al in view of Pemberton.

Papp et al discloses the device of claims 22-24, 30, 32 and 34 as claimed absent the device being manufactured of natural gum rubber.

Pemberton teaches manufacturing circular elastic exercise devices of natural gum rubber.

Given the above teaching the examiner notes that it would have been obvious to one of ordinary skill in the art to manufacture the elastic material of Papp et al of gum rubber as one of many elastic materials available in the selection of elastic materials known to be used in the art of exercise.

In regard to claim 30, note fig. 1, of Papp.

Claims 22, 30-32, 34, 35 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duba in view of Pemberton.

Duba discloses the device of all of the above listed claims absent the feature of the device being manufactured of natural gum rubber.

Pemberton teaches using natural gum rubber as a material of which elastic continuous loop exercise devices are manufactured.

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Given the above teaching the examiner notes that it would have been obvious to one of ordinary skill in the art to manufacture the device of Duba of as a known and obvious material in the art.

In regard to claim 32, element 54 can be considered as an additional fastening or securing device.

Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Duba in view of Pemberton and further in view of Mason et al.

Duba modified by Pemberton discloses the device of claim 37 substantially as claimed absent the feature of the device using increasing thicknesses of band members.

Mason et al teaches employing increasing thicknesses of band members for the purpose of incrementally improving the level of fitness and muscular strength of a user.

Given the above teaching the examiner notes that it would have been obvious to one of ordinary skill in the art to manufacture the device of Duba modified by Pemberton to include bands of increasing thickness and strength for the purpose of improving the level of fitness and muscular strength of said users.

Claims 25-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duba in view of Pemberton and further in view of Williams.

Duba in view of Pemberton disclose the device of claims 25, 26, 27, 28 and 29 substantially as claimed absent the teaching of the device comprising: different lengths and a matte surface.

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Williams teaches the features of a device having various circumferences, textured bands, embossed, roughened textured finishes on one or both surfaces and bands of different thickness.

Given the above teachings and the broadness of applicants claims, the examiner notes that it would have been obvious to one of ordinary skill in the art to provide a matte surface on the surfaces of Duba in view of Pemberton for the purpose of enhancing grip ability and/or to manufacture the bands of different circumferences for the purpose of providing different resistances and different use, applications to the user of the device.

Applicant's arguments with respect to claims 22-37 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to Jerome Donnelly at telephone number (571) 272-4975.

Jerome Donnelly

JEROME DONNELLY  
PRIMARY EXAMINER

A handwritten signature in black ink, appearing to be 'J. Donnelly', written over a horizontal line.